

Federal High Court: no copyright protection for Birkenstock sandals

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- In parallel cases, Birkenstock argued that its sandal models were copyrighted works of applied art and that the defendants' products infringed such copyright
- While the District Court of Cologne ruled in favour of Birkenstock, the High Court of Cologne dismissed the claims in their entirety
- The Federal High Court agreed, highlighting that, to benefit from copyright protection, a design must exceed purely technical requirements and reveal an individual artistic achievement

On 20 February 2025 the Federal High Court dismissed two appeals filed by Birkenstock and confirmed the decisions of the High Court of Cologne, thereby rejecting claims based on copyright.

Background

The plaintiff is part of the Birkenstock Group, which distributes the sandal models 'Madrid', 'Arizona' and 'Gizeh', among others. The models currently look as follows:



Madrid



Arizona.



Gizeh

In [Case I ZR 16/24](#) Birkenstock sued the defendant for distributing the following sandals online:



In a parallel case, [Case I ZR 18/24](#), a different defendant was sued for distributing the following sandals:



Birkenstock argued that its sandal models were copyrighted works of applied art and that the products offered by the defendants violated these copyrights.

In both cases, the District Court of Cologne upheld the claims on 11 May 2023 (Cases 14 O 39/22 and 121/22), but the High Court of Cologne dismissed the claims in their entirety on 26 January 2024 (Cases 6 U 86/23 and 89/23). On further appeal to the Federal High Court, Birkenstock requested the restoration of the District Court judgments.

Federal High Court decisions

In both parallel cases, the Federal High Court rejected the claims based on copyright, finding that the 'Madrid', 'Arizona' and 'Gizeh' sandals were not copyrightable as they were not works of applied art. The models did not have the required originality and artistic level of design, as their design was determined by technical and functional considerations.

This confirmed the High Court decisions. While sandals are, in principle, copyrightable as works of applied art, copyright protection is not available if the sandals do not stand out artistically from previously known designs; rather, to reach the required level of originality, the design must sufficiently and clearly go beyond the usual designs and stand out from the mass of everyday creations.

Birkenstock argued before the Federal High Court that the High Court of Cologne had based its decision on an overly narrow concept of 'art', which amounted to the idea that art must be purposeless and must not pursue any economic goals. However, the mere intention that a model should also sell well cannot *per se* rule out copyright protection, which has been recognised in copyright law for decades. According to Birkenstock, consumers typically associate its classic sandals with the brand. Further, individual elements such as the buckles, materials or strap designs, as well as the combination of these elements, rendered these models works of applied art, as such "brutalist style" was unique when it first appeared.

The Federal High Court, however, emphasised that a certain level of creativity is required for copyright protection under Section 2, Paragraph 1, No 4 of the German Copyright Act. This must exceed purely technical requirements and reveal an individual artistic achievement. In contrast, the design of the Birkenstock sandals was largely determined by technical requirements and functional aspects, which limited creative freedom. More specifically, a personal intellectual creation is excluded where there is no room for artistic design because the design is dictated by technical requirements. Artistic performance means nothing more and nothing less than a creative, inventive, original performance in the field of art that reflects the individual personality of its creator. Accordingly, copyright protection is not available for purely technical creations that use formal design elements. Rather, a level of creativity must be achieved that allows individuality to be recognised.

In copyright infringement proceedings, the plaintiff bears the burden of demonstrating the existence of a personal intellectual creation. Therefore, the plaintiff must not only present the work in question, but also explain the specific design elements based on which copyright protection arises. In the case of everyday objects, the plaintiff must explain precisely and clearly the extent to which such objects have been artistically designed beyond their function-dictated form. Birkenstock failed to demonstrate this minimum standard for its sandal designs.

Comment

Interestingly, Birkenstock did not assert any other courses of action based on trademarks, design rights or unfair competition. Theoretically, trademark law provides indefinite protection for two or three-dimensional designs, but requires distinctiveness; trademarks may thus be rejected if they consist of shapes that are determined by the nature of the goods, are necessary to obtain a technical result or give substantial value to the goods. The aesthetic or artistic value of the form is not relevant for a trademark. Designs require individuality and novelty, which may be problematic if the original design was previously published; in addition, the duration of a registered design is limited to 25 years (or, if unregistered, only three years as an EU design). Finally, imitations under the unfair competition rules require a competitive character, and this protection is limited to about three years.

As the shoe models at issue originated from the 1970s and 1980s, and absent any corresponding trademarks, copyright was apparently the last and only remaining course of action for Birkenstock. Copyright protection lasts for 70 years after the death of the creator – in this case Karl Birkenstock, who is currently still alive. The result is in line with the legislative intent that certain designs should be free for third-party use after such a long period of time has elapsed.

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